

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



July 22, 2003

Agenda ID #2505

TO: PARTIES OF RECORD IN RULEMAKING 01-10-024

This is the draft decision of Administrative Law Judge (ALJ) Walwyn. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:tcg

Attachment

Decision **DRAFT DECISION OF ALJ WALWYN** (Mailed 7/22/2003)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Establish
Policies and Cost Recovery Mechanisms for
Generation Procurement and Renewable
Resource Development.

U 39 E

Rulemaking 01-10-024
(Filed October 25, 2001)

O P I N I O N**I. Summary**

This decision addresses Pacific Gas and Electric Company's (PG&E) May 19, 2003 motion (May 19 motion) for expedited partial authorization to sign contracts for up to fifty percent of its non-baseload 2004 short-term procurement needs.¹ In order to take full advantage of opportunities in the marketplace and negotiate the best possible transactions for its customers, PG&E requests that by July 17, 2003 the Commission issue an interim order authorizing PG&E to procure up to fifty percent of the non-baseload net open position needs for 2004 that are identified in PG&E's 2004 Procurement Plan filed on May 15, 2003.

II. Parties' Positions

In its motion, PG&E asserts that granting the relief requested would ensure that the full benefits of its proposed 2004 procurement plan are recognized

¹ On May 20, 2003, PG&E filed an erratum to the motion to correct the date of requested relief from July 17, 2004 to July 17, 2003.

through gradual, cost-effective procurement over a longer period of time of the needs identified in the plan. PG&E states it will solicit products to fill the identified need through an open, competitive process and, further, that it will immediately make an all-source solicitation to all members of the generation community. PG&E would file any resulting contracts under an advice letter process, so in approving this motion the Commission does not take an irreversible step.² PG&E requests that approval of the contracts would constitute a determination by the Commission that costs incurred by the utility under the contract and/or contracts are reasonable and prudent for purposes of cost recovery. PG&E asserts that the Commission would also be knowledgeable in assessing these advice letter filings because on the timeline it proposes, the Commission should have before it any proposed contracts at the same time that it considers PG&E's overall 2004 plan.

PG&E states that by limiting its requested authority to only fifty percent of non-baseload needs, with the term of any contracts executed under this interim authority not to extend beyond 2004, it affords the Commission ample flexibility to take any action with respect to including cost effective energy efficiency programs, demand response programs, Qualifying Facilities (QFs) and renewable resources.

Responses to PG&E's May 19 motion were timely filed on June 3, 2003 by the Office of Ratepayer Advocates (ORA), San Diego Gas & Electric Company

² The advice letter process cited by PG&E is the expedited review process set forth in Appendix B to D.02-08-071. PG&E states it would consult with members of its Procurement Review Group (PRG) to help assure that the views of non-market participating parties are reflected in the design and selection of products and that the advice letter process can be expedited.

(SDG&E), and The Utility Reform Network (TURN). TURN supports the motion, stating that PG&E's request is justified by prudent resource planning, and may reduce ratepayer exposure to high prices or volatility by giving more time to procure. SDG&E supports PG&E's request because it is important for the Commission to ensure that transitions between the utilities' annual procurement plans occur smoothly and without gaps in advantageous procurement opportunities for customers. SDG&E, however, does not seek the same authority as that requested by PG&E.

ORA conditionally supports PG&E's motion for partial expedited authorization for power procurement. ORA's support is conditioned upon the following:

1. The request for offers (RFO) should be only for products that provide great flexibility to PG&E to respond to changing conditions at reasonable costs. ORA does not recommend specific products but does recommend that drafts of the RFO be shared with the Procurement Review Group (PRG) prior to issuance. Specifically, ORA recommends that PG&E provide the PRG an analysis of product choices as well as RFO language, bid selection and refresh processes, and schedule prior to the issuance of the RFO. ORA estimates this review process may take up to two weeks.
2. PG&E must provide sufficient time for a thorough review and analysis of bids and proposed contracts by individual members of the PRG. Specifically, ORA recommends that after receiving the bids, PG&E should provide the PRG a bid summary and analysis, as well as its selection process, with a two-week window for PRG members to then conduct their own independent analysis and reply to PG&E prior to submission of an Advice Letter.
3. The Commission must allow 30 days for review and analysis of Advice Letters filed pursuant to contracts arising from this partial authorization. This is significantly longer than the period allowed by the Commission on previous procurement Advice Letters, but necessary in order to obviate the need to make any more prospective determinations of per se reasonableness, as requested by PG&E.

In its reply to responses filed on June 11, 2003, PG&E addresses the conditions requested by ORA. PG&E supports the active involvement of the PRG in the 2004 procurement process and states that the first and second conditions of ORA should be able to be met within the 60 days it expects will pass between the granting of PG&E's motion and the filing of the contracts by advice letter. However, PG&E prefers that rather than adopt ORA's first two conditions, which it finds somewhat unclear, the Commission should instead rely on the process set forth in Decision (D.) 02-08-071, a process that it asserts has worked well in practice.

PG&E does not support ORA's third condition, the request for 30 days for review and analysis of Advice Letters filed pursuant to contracts arising from this solicitation. PG&E states protests are normally due 20 days after the date of an Advice Letter filing and ORA gives no reason for extending this period. Rather, PG&E asserts that the involvement of the PRG should reduce the time needed for review of an Advice Letter, not increase it. PG&E requests that protests be due within seven days, the same as the time allowed under the process used for transitional contracts authorized by D.02-08-071.

Discussion

PG&E's request for early authorization of up to fifty percent of its non-baseload 2004 short-term procurement needs is reasonable and should be beneficial in providing it the flexibility to go to the market at opportune times. The only issue in dispute is the specific procedural process to be adopted for review of RFOs and proposed contracts.

Both ORA and PG&E state the PRG process has worked well in practice and should be used for the review of proposed contracts requested here. ORA's request for conditions is based on its experience and involvement in the PRG

process since our August 2002 decision authorizing transitional procurement. It states that the stage at which the PRG becomes involved in the process as well as the length of time the PRG has to consider the issues before them are crucial. Further, ORA states that there have been instances when the utilities have not provided enough time for a thorough review and analysis of certain procurement proposals. In its first two conditions, ORA specifies that the PRG must be involved both before and after the issuance of an RFO, and specifically defines the information needed by PRG members.

We find that ORA's insight and experience with utility PRGs, as reflected in its first two conditions, improves the PRG review process that we first adopted in D.02-08-071. In addition, we do not see adoption of these conditions creating undue delay. Rather, by having PRG input in the early stages, PG&E will have the opportunity to consider and address members' concerns before they lead to formal opposition. We further note that PG&E can begin PRG discussions on the RFO prior to a final Commission decision on its request. We agree with PG&E that the PRG should continue its practice of providing PG&E written comments and it appears that ORA does include this in its second condition. With this clarification, we adopt ORA's first two conditions.

The third condition is the principal one in dispute: how long should parties have to comment on the Advice Letter(s) once it is filed? PG&E requests the seven-day period adopted in D.02-08-071. ORA requests 30 days. PG&E in its reply makes clear that PRG members will not have the opportunity to review final prices prior to submission of signed contracts by Advice Letter and that the Commission's approval of the contracts should constitute a determination by the Commission that any costs incurred under the contract and/or contracts are reasonable and prudent for purposes of cost recovery.

In D.02-08-071, we adopted a very expedited procedural process to meet the January 1, 2003 deadline for the utilities to resume procurement. The Commission required parties to review and file protests on Advice Letters within seven days and committed to have its staff review and prepare resolutions on an expedited basis. The review process set forth in D.02-08-071 also indicates the Commission's willingness to invoke the requirements of public necessity to reduce the 30-day period for public review and comment. PG&E does not state that there is a public necessity to its request that would outweigh the public interest in affording parties, Commission staff, and the public the standard time for Advice Letter review and comment.

Based on our review of the timing and magnitude of projected residual net short needs in PG&E's 2004 short-term procurement plan, a normal review period can be provided without endangering the market flexibility requested by PG&E.³ We are not in a situation here that requires extraordinary measures and, therefore we should not reduce the protest period to seven days. We do not have the staff resources to routinely meet an expedited procedural schedule, and we expect that interested parties have the same constraints.

³ PG&E also requests a Commission decision by July 14, 2003 on its May 19 motion. The last July meeting was July 10, 2003. In its June 11, 2003 reply comments, PG&E is clear that it does not accept ORA's conditions. Therefore, this is not an uncontested matter where the Commission can reduce the 30-day public review and comment period because we are granting the relief requested. Under the Rules of Practice and Procedure, we can only reduce the thirty public review and comment period if we find that the public interest in adopting a decision before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment. The facts presented here do not warrant making that finding.

We agree with ORA that the approval of large dollar procurement contracts, with no later reasonableness review, could warrant a longer protest period than the twenty days provided for Advice Letter filings. Specifically, the process we adopted for expedited applications in Appendix C of D.02-10-062 provides for a 30-day protest period. However, PG&E's request is for terms not to exceed one year and for the PRG to be closely involved in the solicitation process prior to the filing of the contracts. For these two reasons, we find the Advice Letter process and a 20-day protest period to be sufficient.

At the request of PG&E, we specify that the price and terms of the contracts submitted under this authority should be found reasonable and prudent for the purposes of cost recovery, though we do note that the administration and dispatch of any resulting contracts will be subject to later reasonableness review.

Comments on Draft Decision

The draft decision of the administrative law judge (ALJ) in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner, and Christine M. Walwyn is the assigned ALJ in this proceeding.

Findings of Fact

1. PG&E's request for early authorization to negotiate procurement contracts for up to fifty percent of its non-baseload 2004 short-term procurement needs is reasonable and should be beneficial in providing it the flexibility to go to the market at opportune times.

2. ORA's request that the Commission adopt conditions that specify that PG&E's procurement review group will be involved both before and after the issuance of a Request for Offers improves the review process first adopted in D.02-08-071.

3. A normal 20-day review period for the advice letter filings of proposed contracts under this authorization is adequate because the contracts are limited to a one-year term and there will be a specified pre-review process with the Procurement Review Group. An expedited review period is not warranted.

Conclusions of Law

1. PG&E should be granted early authorization to procure up to fifty percent of its 2004 short-term procurement needs under contracts of up to one year with the following conditions:

- a. Prior to issuance of a Request for Offers (RFO), PG&E should timely provide its Procurement Review Group an analysis of product choices as well as RFO language, bid selection and refresh processes, and schedule.
- b. After receiving bids from its RFO, PG&E should provide the Procurement Review Group a bid summary and analysis, as well as its selection process, with a two-week window for Procurement Review Group members to then conduct their own independent analysis and provide written comments to PG&E prior to submission of an Advice Letter.

2. In approving contracts submitted under this authority, the Commission should specify that the price and terms are reasonable and prudent for the purposes of cost recovery and that administration and dispatch of any resulting contracts is subject to later reasonableness review.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is granted early authorization to procure up to fifty percent of its non-baseload 2004 short-term procurement needs under contracts of up to one year with the following conditions:

- a. Prior to issuance of a Request for Offers (RFO), PG&E shall timely provide its Procurement Review Group an analysis of product choices as well as RFO language, bid selection and refresh processes, and schedule.
- b. After receiving bids from its RFO, PG&E shall provide the Procurement Review Group a bid summary and analysis, as well as its selection process, with a two-week window for procurement review group members to then conduct their own independent analysis and provide written comments to PG&E prior to submission of an Advice Letter.

This order is effective today.

Dated _____, at San Francisco, California.